IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4233 of 2007()

CRA.698/2006 of ADDL. SESSIONS COURT (ADHOC), KOZHIKODE
CC.179/2003 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE

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REVN. PETITIONER: APPELLANT/ACCUSED

DEVADASAN, S/O.APPU NAIR, AGED 43 YEARS,
RESIDING AT KENAYETH HOUSE, PADINHATTU MURI
AMSOM, KIZHAKKUMURI DESOM, KOZHIKODE.

BY ADV. SRI.P.K.RAMKUMAR

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE

STATE OF KERALA, REP. BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA AT ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 4233 of 2007

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Dated: 29-11-2007

ORDER

Revision petitioner stands concurrently convicted and sentenced for offences punishable under Sections 279, 337 and 338 I.P.C. read with Sections 187, 177 and 134 (b) of Motor Vehicles Act.

2. The case of the prosecution can be summarised as follows:-

On 22-09-2002 while C.W.2 (since deceased) was riding his bicycle near the English Church Panicker road, the accused came driving an autorickshaw bearing Reg. No. KL-11-N-8666 in a rash and negligent manner so as to endanger human life and dashed on the back of C.W.2 who was riding ahead of the said autorickshaw. C.W.2 was thrown off the road and he sustained injuries. After the hit, the autorickshaw proceeded further and dashed against P.W.3 who was a pedestrian walking along the side of the road. The accused failed to inform the accident to the police. He also failed to keep the trip sheet in the autorickshaw. He has, thus, committed offences punishable under Sections 279, 337 and 338 I.P.C. and Sections 187 and 177 of the Motor Vehicles Act, 1988.

3. On the side of the prosecution, 10 witnesses were examined as P.Ws 1 to 10 and 8 documents were got marked as Exts. P1 to P8. The accused denied the incriminating circumstances put to him during his examination under Section

313 (1)(b) Cr.P.C. He did not adduce any defence evidence when called upon to to do so.

4. The learned Magistrate, after trial, as per judgment dated 27.09.2006 found the revision petitioner guilty of the offences and sentenced him to various periods of imprisonment for the offences under I.P.C. and to pay fine for the offences under the Motor Vehicles Act.

5. On appeal preferred by the revision petitioner as Crl. Appeal 698 of 2006 before the Sessions Court, Kozhikode, the learned Addl. Sessions Judge, Fast Track (Adhoc -I), Kozhikode as per judgment dated 22-09-2007 dismissed the appeal confirming the conviction entered and the sentence passed against the revision petitioner. Hence this Revision.

6. The road where the accident took place runs east-west and the revision petitioner who was the driver of an autorickshaw was proceeding from east to west. C.W.2 (who since died) was riding on his bicycle ahead of the autorickshaw along the southern side of the road. It was at this juncture that the autorickshaw driven by the accused suddenly dashed against the cyclist throwing him off the road and resulting in his sustaining injuries. After the hit the autorickshaw proceeded further and knocked down P.W.3 who also sustained injuries. Out of the occurrence witnesses examined as P.Ws 1,2,3 and 10, P.Ws 2 and 3 turned hostile to the prosecution.

7. Evethough the learned counsel appearing for the revision petitioner assailed the conviction recorded against him on various grounds, since the conviction has been entered by the courts below after a careful evaluation of the oral and documentary evidence , I see no reason to disagree with the conviction recorded by the courts below . The conviction is

accordingly, confirmed.

8. What now survives for consideration is the question regarding the adequacy or otherwise of the sentence imposed on the revision petitioner. It is true that the occurrence took place on account of the rash and negligent driving of the autorickshaw by the revision petitioner. But the facts and circumstances of the case will show that the revision petitioner does not deserve penal servitude by way of incarceration for the conviction recorded against him. Incidentally, it is pertinent to note that the courts below have been insensitive to the statutory mandate contained in Sec. 357 Cr.P.C. in not awarding any compensation to the injured. The duty of the court to liberally invoke the above provision and give succor to the victims of crimes was highlighted by the Apex Court way back in 1998 in the decision reported in **AIR 1988 S.C. 2127.** In spite of said ruling , the courts below have not been alive to the need to compensate the victims. Accordingly, the sentence of imprisonment imposed on the revision petitioner for his conviction under Sections 279, 337 and 338 I.P.C. is set aside and instead he is sentenced to pay fine of Rs. 1,000/- under Sec. 279 I.P.C. and in default to pay the fine, he shall suffer simple imprisonment for 20 days. For his conviction under Section 337 I.P.C. the revision petitioner is sentenced to pay a fine of Rs. 500/- and on default to pay the fine he shall suffer simple imprisonment for 10 days. For his conviction under Section 338 I.P.C. the revision petitioner is sentenced to undergo imprisonment till the rising of the court and to pay a sum of Rs. 6,000/- as compensation under Sec. 357 (3) Cr.P.C. and on default to pay the compensation he shall suffer simple imprisonment for one month. The compensation as ordered

above shall be payable in equal shares to P.W.3 and the legal heirs of C.W.2. The sentence passed under the M.V. Act is sustained.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR,
(JUDGE)

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